

### REMARKS

The Office Action mailed November 9, 2010, has been received and its contents carefully noted. Claims 1, 3, 5, 7, 9 and 11-14 were pending. Claims 2, 4, 6, 8 and 10 have been cancelled. Claims 1, 3, 5, 7, 9 and 12-14 were rejected. An objection was made to claim 11. By this Response, claims 1, 3, 5 and 14 are amended and claims 12-13 are cancelled. Claim 1 includes the subject matter of claim 2 (also claims 4 and 6) and has been amended to address the point raised in the Office Action.

Claim 1 has been amended to include the subject matters of claims 12 and 13. Claims 3 and 5 have been amended to clearly indicate that the product described in claim 1 is recovered. Support may be found in the specification and in the original claims. No statutory new matter has been added. Therefore, reconsideration and entry of the claims, as amended, are respectfully requested.

Applicants note with appreciation the indication that subject matter of claim 11 is indicated to be allowable. Applicants reserve the right to place the claim in independent form.

#### ***Rejection under 35 U.S.C. § 112***

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse.

Claim 12 has been cancelled which moots the rejection.

#### ***Rejection under 35 U.S.C. § 103(a)***

Claims 1, 3, 5, 7, 9 and 12-14 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Kerner et al. (US 20020168524) in view of Mitchnick et al. (US 5,486,631), Korth et al. (US 7,186,768) and Katustic (US 7,718,261). Applicants respectfully traverse.

The Examiner's continued reliance on Kerner et al. The Kerner et al. patent is directed to a surface-modified, doped, pyrogenically produced oxides doped by aerosol. (None of the Kerner et al. examples are directed a doped or otherwise zinc oxide product.) A sunscreen use is not mentioned

as one of the utilities recited on page 4. One of the utilities mentioned is as a UV blocker, "e.g. in cosmetics". Zinc oxide is not singled out.

The present specification is more informative in terms of identifying the actual state of the art prior to Applicants' discovery. Consider, e.g., paragraphs [00022], [00035], and [00036].

With Kerner et al. as a starting point, one requires some guidance in selecting zinc oxide as the metal oxide and some motivation to not use a dopant and lose the "benefits" associated with doping. One then would need to choose as the cosmetic- sunscreen lotions. Claim 1 has additional limitations and required choices. These too would require requisite teachings and motivation.

Mitchnick et al. teach the use of process for hydrophobizing zinc oxide using specific silicones to address zinc oxide reactivity. Sunscreen use is mentioned. The silicone structure, e.g., octyl palmitate, is taught to be critical to achieve the Mitchnick et al. taught benefits. The Mitchnick treatment process is distinct from those claimed and taught in the present specification.

Korth et al. teach silane-modified oxidic or siliceous fillers in rubber compounds. An object sought by Korth et al. is a low dust oxidic or silane-modified filler. The filler shape is predominately bead-shaped, spherical, round and/or homogeneous shaped. The filler displays a mean a statistically determined mean shape factor greater than 0.805. The filler displays a statistically determined mean circle factor greater than 0.55. A circular or sphere shape is desired by Korth as a filler for rubber. The claimed values are in a different direction, less circular, less spherical.

Katusic et al. teach nanoscale pyrogenically produced zinc oxide. A variety of uses are mentioned including use in sunscreen formulations. The product taught is quite similar to the zinc oxide disclosed herein except for the silane surface modification. The goal taught by Katusic et al. for their zinc oxide powder is high transparency combined with good UV protection. There is no teaching of surface modification or a need therefore.

Claim 1 has been amended. It is believed that the claims are more commensurate in scope with the results shown in the specification, which the Examiner agrees that the results are unexpected. The Examiner suggests that these results are more commensurate in scope with claim

11/9/1. Claim 1 has been amended to define the zinc oxide with more particularity. Though it is broader in terms of the carrier, it is more limited than “allowed” claim 11 in terms of the zinc oxide.

Reconsideration is respectfully requested as is withdrawal of the rejection.

**Request for Interview**

A telephonic or an in-person interview is respectfully requested should there be any remaining issues.

### CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider the presently outstanding rejection and that it be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefor are hereby authorized to be charged to **Deposit Account No. 02-4300, Attorney Docket No. 032301.443.**

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

By: 

Thomas G. Wiseman, Reg. No. 35,046  
1130 Connecticut Ave., N.W., Suite 1130  
Washington, D.C. 20036  
Telephone: (202) 263-4300  
Facsimile: (202) 263-4329

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